REMARKS

The examiner has indicated that restriction to one of the following inventions is required under 35 USC 121:

I: Claims 1-6, drawn to a method of changing the audible volume level of a digital signal, classified in class 381, subclass 56.

II: Claims 7-14, drawn to a digital signal processor for adjusting the volume of a digital signal, classified in class 700, subclass 94.

Response:

The applicant hereby provisionally elects with traverse (see below for reasons) the following species:

I: Claims 1-6, drawn to a method of changing the audible volume level of a digital signal, classified in class 381, subclass 56

in response to the above election requirement. The claims readable on the elected species are claims 1-6.

However, applicant also asserts that claims 7-14 should not be found as a patentably distinct invention with respect to claims 1-6 and therefore requests a withdrawal of the restriction requirement.

Firstly, applicant points out that that claims 1-6 are drawn to a method of changing the audible volume level of a digital signal, and claims 7-14 are drawn to a corresponding digital signal processor for adjusting the volume of a digital signal. The two claiming formats of method and apparatus are both included for the same invention of adjusting the volume of a digital signal. In this way, a single patent applicant for the single invention is proper. In support of this argument, applicant notes that MPEP 803 states, "an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct." (emphasis added) However, applicant notes that the Examiner also advised applicant that "if any claim presented in a continuation or divisional application is anticipated by, or includes all the

limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application." (See Office action mailed 02/26/2007) This appears to be in violation of MPEP 803 because the Examiner is both requiring restriction between claim sets and at the same time warning that the two different claim sets are not able to support separate patents.

Secondly, the Examiner said that it would be a "serious burden" on the Examiner to examine both claim sets. Applicant respectfully disagrees and notes that both claim sets correspond to the same inventive idea of adjusting the volume of a digital signal and therefore the search for one claim set will overlap with the search for the second claim set without requiring serious burden. For example, both claim sets have DSPs, and both include adjusting a volume signal to a destination volume value within a predetermined time. MPEP 803 also states, "If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." (emphasis added)

Applicant respectfully requests that the Examiner reconsider and remove the restriction requirement for at least the reason that the above identified two claims sets are not patentability distinct to be filed as separate patents. Additionally, as they are very close in claim scope, they would not require serious burden to the Examiner to examine them both on the merits.

No new matter is introduced in this Office action. Consideration of claims 1-14 is requested.

Sincerely yours,

Winston Hsu Date: 03/26/2007

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Note: Please leave a message in my voice mail if you need to talk to me. (The time in D.C. is 12 hours behind the Taiwan time, i.e. 9 AM in D.C. = 9 PM in Taiwan.)